



Transfer of Residential Land

Chapter 2 of the *Duties Act 2008*

As at 1 July 2022

This fact sheet provides an overview of the rates of duty that apply to eligible transactions involving residential land.

Foreign transfer duty will be applied to acquisitions of residential property by foreign persons.

Terms used

An **eligible purchaser** is a person who:

- occupies or will occupy the property as their principal place of residence for an indefinite period and
- is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person unless they are a trustee acquiring property on behalf of one or more disabled beneficiaries if at least one beneficiary occupies or will occupy the property as their principal place of residence.

An **eligible transaction** is a transfer, an agreement to transfer, or a vesting by court order, of land in Western Australia.

Residential land means an eligible transaction, if at the date the liability to duty arose:

- there is a residence on the land or
- the taxpayer or a substituted transferee, has begun construction of a residence on the land or
- the taxpayer or a substituted transferee, has entered into a contract for the construction of a residence on the land or
- the taxpayer or a substituted transferee, has entered into a contract to purchase a movable building that will be affixed to the land and be used as a residence,

and it doesn't matter if the land is also used for another purpose.

A **residence** means a building, or part of a building, that:

- may lawfully be used and
- is suitable to be used¹ and
- is intended by the taxpayer to be used

as a place of residence for one or more individuals.

¹ In the Commissioner's opinion.

Residential rate of duty

The residential rate of duty applies to transactions entered into between 1 July 2008 and 30 June 2022. From 1 July 2022, the general rate applies to all residential and commercial land unless another concessional rate of duty applies.²

The residential rate applies to:

- property used as a residence, such as a person's ordinary home, rental property or holiday home
- land on which a residence is constructed within five years of the date on which liability to duty on the transaction arose
- property partly used as a residence, such as a restaurant with a residence above it.

Examples of when the residential rate of duty does not apply include:

- a building purchased or constructed that is not approved for residential purposes or
- a residence purchased with the intent to rezone and use the land for non-residential purposes.

If an eligible transaction is entered into for vacant land before 1 July 2022, and within five years of the date of the transaction, the purchaser:

- commences constructing a residence
- enters into a contract to construct a residence or
- enters into a contract to purchase a movable building that will be affixed to the vacant land

use www.osr.wa.gov.au/portal to apply for a reassessment of duty. Applications must be made within the later of five years of the date of liability for the transaction, or within 12 months of the date when construction began or the contract was entered into.

First home buyers should review the ['First Home Owner Rate of Duty' fact sheet](#).

Concessional rate of duty

The concessional rate of duty may apply to an eligible transaction if the dutiable property:

- includes a house
- has a dutiable value that does not exceed \$200,000 and
- has not been received as a gift and
- is to be transferred to an *eligible purchaser*, or a combination of eligible purchasers and government bodies.

Use [Form FDA3 'Concessional Rate for Certain Residential Land or Business Assets'](#) to apply for the concessional rate.

² As of 1 July 2022, the general rate is the same as the residential rate of duty.

Transfer duty rates

See [the transfer duty web page](#) or use our [online calculator](#) for rates of duty.

Lodgment requirements

The party responsible for paying duty (usually the purchaser or transferee) must lodge a hard copy instrument that effects or evidences a dutiable transaction within two months of the date liability for duty arises, or [Form FDA18 'Transfer Duty Statement'](#) if there is no hard copy instrument. The date liability for duty arises for an offer and acceptance to purchase land is the date the contract was entered into. See [Lodgment and Payment](#) information on the website.

All transactions involving the purchase or acquisition of land (or any interest in land), must be accompanied by a completed [Form FDA41 'Foreign Transfer Duty Declaration'](#) for each person or entity acquiring the land.

Important information

Purchaser

Details of the purchaser must be provided in full. State whether the property is to be held as joint tenants or tenants in common. If tenants in common, state the percentage of each party's ownership or it will be presumed the ownership is to be in equal shares.

If the purchaser is acting as a trustee for a trust, disclosing the trustee and trust on the agreement at the time the agreement is entered into will assist in avoiding additional duty.

The intended purchaser must be clearly established before entering into a dutiable transaction. Any subsequent variation of the purchaser may result in further duty being payable.

Transfer under agency relationship

If an agency relationship is disclosed in the agreement, and the principal and agent are clearly identified, the subsequent transfer of land in the name of the principal will not incur additional duty. If the agency relationship is not clearly identified, additional duty may be payable. For more information, see [Revenue Ruling DA 7 'Transfer under Agency Relationship'](#).

Substituted transferee

In certain circumstances, relief from additional transfer duty may be available if the person named as transferee in a transfer of land differs from the person named in the agreement as the purchaser. Submit the agreement for transfer (for example, offer and acceptance) and transfer of land form together with [Form FDA14 'Substituted Transferees'](#). For more information, see the ['Substituted Transferees'](#) fact sheet.

Foreign transfer duty

Foreign transfer duty at a rate of 7 per cent applies to foreign dutiable transactions involving residential land. The value of any chattels sold with residential land will be aggregated with the value of the property if the chattels are directly linked to or are incidental to the use of the property for residential purposes.

For more information, see the ['Foreign Transfer Duty'](#) fact sheet and [Commissioner's Practice DA 44 'Residential Property for the Purposes of Foreign Transfer Duty'](#).

Further duty payable

Further transfer duty may be incurred when a transfer (such as a transfer of land) is not in accordance with the agreement for transfer (for example, if there is a different purchaser or a different percentage of ownership) or if the new purchaser is not recognised as the principal under an agency relationship or as a substituted transferee.

For more information, see the [‘No Double Duty’ fact sheet](#).

Contact RevenueWA			
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Note: This fact sheet provides guidance only. Refer to the *Duties Act 2008* for complete details.